

**UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF NEW YORK**

ADMINISTRATIVE PROCEDURES GUIDE



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ADMINISTRATIVE PROCEDURES

The U.S. District Court for the Western District of New York permits attorneys to file documents with the Court from their own offices over the Internet. Only registered attorneys, as Officers of the Court, or their authorized employees or agents as provided in Section 1.c.iv, below, are permitted to file electronically. The term “Electronic Filing System” refers to the court’s system that receives documents filed in electronic form. The term “Filing User” is used to refer to those who have a court-issued username and password to file documents electronically.

1. REGISTRATION FOR THE ELECTRONIC CASE FILING SYSTEM

a. Designation of Cases

Beginning January 1, 2004, all civil and criminal cases currently pending and newly filed, except as expressly noted herein, shall be assigned to the Electronic Case Filing System (“System”). Except as expressly provided and in exceptional circumstances preventing a Filing User from filing electronically, all petitions, motions, memoranda of law, or other pleadings and documents required to be filed with the court in connection with a case assigned to the Electronic Filing System must be electronically filed.

b. Username and Password

Attorneys admitted to practice in this Court and currently in good standing, including those admitted pro hac vice and attorneys authorized to represent the United States, may register as Filing Users of the court’s Electronic Filing System.

c. Registration

- i. Registration is in a form prescribed by the clerk and requires the Filing User’s name, address, telephone number, Internet e-mail address and a declaration that the attorney is admitted to the bar of this court. A completed registration form, in the form attached, must be submitted to the court by each attorney. The form may be duplicated for use. This form is also available on our web site at: www.nywd.uscourts.gov . Registration as a Filing User constitutes consent to electronic service of all documents as provided herein in accordance with the Federal Rules of Civil

Procedure.

- ii. All registration forms must be mailed or delivered to the Office of the Clerk, U.S. District Court, 68 Court Street, Buffalo, NY 14202.
- iii. The registering attorney's username and password will be mailed to the attorney in an envelope marked "Confidential," unless the Clerk's Office is notified, in writing, at the time of registration that the attorney wishes an alternate delivery method. The attorney's username and password combination serves as a signature for purposes of Fed.R.Civ.P. 11, the Federal Rules of Civil Procedure, the local rules of this court, and any other purpose for which a signature is required in connection with proceedings before the court. The login and password issued to an individual attorney may be used only to file documents on behalf of that attorney.
- iv. The Clerk's Office Help Desk Line will be activated on January 1, 2004 to assist users, in accordance with Section 2.o.ii, below.
- v. A registered attorney may share his or her username and password with an authorized employee or agent of that attorney's law office or organization for purposes of filing. This does not in any way alter the fact that the attorney's username and password combination constitute that attorney's official signature on electronically filed documents.
- vi. Registered attorneys will be able to change their own passwords. In the event that an attorney believes that the security of an existing password has been compromised and that a threat to the System exists, the attorney shall change their password immediately. In addition, the attorney shall give immediate notice by telephonic means to the Clerk of Court, Chief Deputy Clerk or Systems Manager and confirm by facsimile in order to prevent access to the System by use of the old password. Users may be subject to sanctions for failure to comply with this provision.
- vii. A registered attorney whose e-mail address, mailing address, telephone or fax number has changed from that of the original Attorney Registration Form shall timely e-file a notice of a

change of address in each of his or her pending cases, and serve a copy of the notice on all other parties. Registered attorneys are responsible for updating this information in their user accounts in the System.

- viii. The Court reserves the right to revoke or otherwise restrict a registered attorney's access to the System at any time should the Court have reasonable cause to believe that the attorney has misused the System. Electronic and written notice of any such revocation or restriction shall be provided to the attorney.
- ix. Once registered, a Filing User may withdraw from participation in the Electronic Filing System only by permission of the Chief Judge of the District for good cause shown. The Filing User seeking to withdraw must submit a written request to the Chief Judge explaining the reason(s) or justification(s) for withdrawal. Upon the Chief Judge's approval of the request, the Clerk of Court shall delete the Filing User's username and password from the system, and notify the Filing User of same. It is the Filing User's responsibility to notify opposing counsel in all pending cases that the Filing User has been granted permission to withdraw from the Electronic Filing System and that all future service must therefore be made by conventional means.

2. ELECTRONIC FILING AND SERVICE OF DOCUMENTS

a. Filing

- i. Beginning January 1, 2004 all documents, except sealed papers and as expressly provided for in these guidelines, shall be electronically filed on the system. Electronic transmission of a document to the Electronic Filing System consistent with these procedures, whether accomplished by the Filing User or a Court User, together with the transmission of a Notice of Electronic Filing from the court, constitutes filing of the document for all purposes of the Federal Rules of Civil and Criminal Procedure and the local rules of this court, and constitutes entry of the document on the docket kept by the clerk under Fed.R.Civ.P. 58 and 79 and Fed.R.Crim.P. 49 and 55. A document shall not be considered filed for purposes of the Federal Rules of Civil and Criminal Procedure until the filing party receives a System-

generated Notice of Electronic Filing.

- (1) E-mailing a document to the Clerk's Office or to the assigned judge shall not constitute "filing" of the document.
 - ii. If the document to be filed requires leave of court such as an amended complaint or a document to be filed out of time, the proposed document shall be attached as an exhibit to the motion. If the motion is granted, the attorney must file the document electronically with the Court as a separate document.
 - iii. Courtesy copies of certain documents may be required. Filers should refer to the "Who Wants Paper" matrix published on the Court's website, www.nywd.uscourts.gov.
 - iv. Before filing a scanned document with the court, a Filing User must verify its legibility.
- b. Official Court Record
- i. The Clerk's Office will not maintain a paper court file in any case begun on or after January 1, 2004, except as otherwise provided herein. The official court record shall be the electronic file as stored by the court, and any conventional documents or exhibits filed in accordance with these procedures.
 - ii. Original documents must be retained by the filing party and made available, upon request, to the Court and other parties for a period of five years following the expiration of all time periods for appeals.
- c. Complaints, Petitions, Summons and Charging Instruments
- i. Complaints and petitions shall be filed, fees paid, and summonses issued and served in the traditional manner rather than electronically. Charging instruments in criminal cases shall be filed in the traditional manner rather than electronically. In addition, attorneys shall provide the complaint, petition or charging instrument in electronic format on a disk or CD, in PDF format, with signatures in accordance with Section 2.g, below.

If the complaint, petition or charging instrument is not provided in electronic format on a disk or CD, in PDF format, the document or documents will be scanned and uploaded to the System by Clerk's Office staff.

d. Attachments and Exhibits

- i. Attachments and exhibits larger than five megabytes shall be filed electronically in separate five-megabyte segments.
- ii. Filing Users must submit in electronic form all documents referenced as exhibits or attachments, except as otherwise provided herein. A Filing User must submit as exhibits or attachments only those excerpts of the referenced documents that are directly germane to the matter under consideration by the court. Excerpted material must be clearly and prominently identified as such. Filing Users who file excerpts of documents as exhibits or attachments under this rule do so without prejudice to their right to timely file additional excerpts or the complete document. Responding parties may timely file additional excerpts or the complete document that they believe are directly germane. The court may require parties to file additional excerpts or the complete document. A Filing User must request leave of the Court to file a document exhibit or attachment in non-electronic form.
- iii. Exhibits such as videotapes and tape recordings shall be filed in the conventional manner with the Clerk of Court, and a Notice of Manual Filing shall be electronically filed by the filing party.

e. Timely Filing of Documents

- i. A document will be deemed timely filed if filed prior to midnight Eastern Time, unless otherwise ordered by the Court. A document will be considered untimely if filed thereafter. When a Court order requires that a document be filed on a weekend or holiday, the document may be filed by Close of Business the next business day without further application to the Court.
- ii. A document filed electronically is deemed filed at the date and time stated on the Notice of Electronic Filing.

- iii. Filing a document electronically does not alter the filing deadline for that document. Filing must be completed before midnight local time where the court is located in order to be considered timely filed that day.

f. Service of Documents by Electronic Means

- i. By participating in the electronic filing process, parties consent to the electronic service of all documents, and must make available electronic mail addresses for service during the registration process. Upon the filing of a document by a party, a Notice of Electronic Filing, with a hyperlink to the filed document, will be automatically generated by the electronic filing system and sent via electronic mail to the e-mail addresses of all parties participating in the electronic filing system in the case. Electronic service of the Notice of Electronic Filing constitutes service of the filed document for all purposes of the Federal Rules of Civil Procedure, Federal Rules of Criminal Procedure and the Local Rules of this Court.
- ii. A certificate of service on all parties entitled to service or notice is still required when a party files a document electronically. The certificate must state the manner in which service or notice was accomplished on each party so entitled. A certificate of service should be filed as an attachment to the document. A sample certificate of service is attached to these guidelines, and is also available on the Court's website at: www.nywd.uscourts.gov.
- iii. A party who is not a registered participant of the System is entitled to a paper copy of any electronically filed pleading, document, or order. The filing party must therefore provide the non-registered party with the pleading, document or order according to the Federal Rules of Civil and Criminal Procedure. When mailing paper copies of documents that have been electronically filed, the filing party may include the "Notice of Electronic Filing" to provide the recipient with proof of filing.
- iv. E-mailing or faxing a pleading or document to any party shall not constitute service of the pleading or document.

g. Signatures

- i. Non-Attorney Signature Generally. If the original document requires the signature of a non-attorney, the filing party shall obtain the signature of the non-attorney on the document.
 - (1) The filing party or attorney then shall file the document electronically, or submit the document on disk to the Clerk's Office, indicating the signatory's name in the form "s/(name)."
 - (2) A non-filing signatory or party who disputes the authenticity of an electronically filed document or the authenticity of the signature on that document must file an objection to the document within ten days of receiving the Notice of Electronic Filing.
- ii. Defendant Signatures in Criminal Cases. A document containing the signature of a defendant in a criminal case will be filed in a scanned format that contains an image of the defendant's signature.
- iii. Attorney Signature. The username and password required to submit documents to the Electronic Filing System serve as the Filing User's signature on all electronic documents filed with the court. They also serve as a signature for purposes of Fed.R.Civ.P. 11, the Federal Rules of Civil Procedure, the local rules of this court, and any other purpose for which a signature is required in connection with proceedings before this court. A pleading requiring an attorney's signature must include a signature block in the following format:

s/attorney's typed name
Attorney for [plaintiff/defendant]
Firm Name
Address
Telephone Number
Email Address

For certificates of service, affidavits,
affirmations and declarations only, the

signature block may be in the following format:

s/attorney's typed name

- (1) Any party challenging the authenticity of an electronically filed document or the attorney's signature on that document must file an objection to the document within ten days of receiving the Notice of Electronic Filing.

iv. Multiple Signatures: The following procedure applies when a stipulation or other document requires two or more signatures:

- (1) The filing party or attorney shall initially confirm that the content of the document is acceptable to all persons required to sign the document and shall obtain the signatures of all parties on the document.
- (2) The filing party or attorney then shall file the document electronically indicating the signatories, e.g., "**s/Jane Doe,**" "**s/John Smith,**" etc.
- (3) A non-filing signatory or party who disputes the authenticity of an electronically filed document containing multiple signatures or the authenticity of the signatures themselves must file an objection to the document within ten days of receiving the Notice of Electronic Filing.

v. Originals of all documents containing signatures must be retained by the filing party and made available, upon request, to the Court and other parties for a period of five years following the expiration of all time periods for appeals.

h. Fees Payable to the Clerk

- i. Any fee required for filing of a pleading or paper in District Court is payable to the Clerk of Court by check, money order or cash. The Clerk's Office will document the receipt of fees on the docket with a text-only entry. The court will not

maintain electronic billing or debit accounts for lawyers or law firms.

i. Orders and Judgments

- i. All signed orders and judgments, except those under seal, will be electronically filed by the Court. Any electronically signed order or judgment has the same force and effect as a conventional order or judgment.
- ii. The assigned judge, if appropriate, may issue routine orders by a text-only entry upon the docket. In such cases, no PDF document will issue; the text-only entry shall constitute the court's only order on the matter.
- iii. Immediately upon the entry of an order or judgment in an action assigned to the Electronic Filing System, the clerk will transmit to Filing Users in the case, in electronic form, a Notice of Electronic Filing. Electronic transmission of the Notice of Electronic Filing constitutes the notice required by Fed.R.Civ.P. 77(d) and Fed.R.Crim.P. 49(c). The clerk must give notice in paper form to a person who has not consented to electronic service in accordance with the Federal Rules of Civil Procedure.

j. Proposed Orders

- i. Proposed orders should be attached to an Internet e-mail sent to the e-mail address of the assigned judge. The e-mail addresses are as follows:

Chief Judge Arcara	arcara@nywd.uscourts.gov
Judge Larimer	larimer@nywd.uscourts.gov
Judge Skretny	skretny@nywd.uscourts.gov
Judge Siragusa	siragusa@nywd.uscourts.gov
Judge Curtin	curtin@nywd.uscourts.gov
Judge Telesca	telesca@nywd.uscourts.gov
Judge Scott	scott@nywd.uscourts.gov
Judge Feldman	feldman@nywd.uscourts.gov
Judge Schroeder	schroeder@nywd.uscourts.gov
Judge Payson	payson@nywd.uscourts.gov

Judge McCarthy mccarthy@nywd.uscourts.gov
Judge Foschio foschio@nywd.uscourts.gov

No other documents, pleadings or electronic communications may be sent to the above e-mail addresses

- ii. All proposed orders must be submitted in a format compatible with WordPerfect, which is a “Save As” option in most word processing software. Judges will not accept proposed orders in PDF format.

k. Title of Docket Entries

- i. The party electronically filing a pleading or document shall be responsible for designating a docket entry title for the document by using one of the docket events prescribed by the court.

I. Correcting Docket Entries

- i. Once a document is submitted and accepted it becomes part of the case docket. The System will not permit the non-court electronic filer to make changes to the document(s) or docket entry.
- ii. A document incorrectly filed in a case may be the result of posting the wrong PDF file to a docket entry, or selecting the wrong document type from the menu, or entering the wrong case number and not catching the error before the transaction is completed. **The filing party should not attempt to re-file the document.**
- iii. As soon as possible after an error is discovered, the filing party should telephone the Court’s Help Desk number with the case number and document number for which the correction is being requested. If appropriate, the court will make an entry indicating that the document was filed in error. The filing party will be advised if the document needs to be re-filed. In such cases, the Court will make a determination on the timeliness of the re-filed document.

m. Privacy

In all filings, parties shall comply with Federal Rule of Civil Procedure 5.2 or Federal Rule of Criminal Procedure 49.1.

n. Conventional Filing of Certain Types of Cases

- i. Miscellaneous Civil and Miscellaneous Criminal cases traditionally filed under seal shall be filed conventionally. Such cases will not be available electronically, except to court users, until such time as they are unsealed by order of the Court.

o. Conventional Filing of Documents

- i. The following procedures govern documents filed conventionally. The court, upon application, may also authorize conventional filing of other documents otherwise subject to these procedures.
 - (1) Documents Filed Under Seal. Unredacted documents filed with the court pursuant to the privacy provisions of Federal Rule of Civil Procedure 5.2 or Federal Rule of Criminal Procedure 49.1 shall be submitted in a sealing envelope with the following on the envelope:

<Case name and number>
Unredacted version of doc# <no.> e-filed on <date>
FILE UNDER SEAL

Except as authorized by statute or federal rule, no document shall be filed under seal without prior approval by the Court. A party seeking to file a document under seal shall deliver a paper copy of the following documents directly to the chambers of the assigned judge, without electronically filing the same:

- (a) a copy of the document to be sealed;
- (b) a supporting affidavit setting forth the reasons as to why the document should be placed under seal

and, if appropriate, a memorandum of law ("supporting materials");

- (c) a letter-size envelope ("sealing envelope") to which is affixed a label bearing the case name, case number and the words "Sealed per Order of Judge _____" ; and
- (d) a proposed order granting the motion to seal.

In addition, the party shall electronically file a notice of motion which shall identify the nature of the document to be sealed, but need not state the reasons why sealing is necessary. Motions by the government to file a warrant under seal are excluded from this requirement. In all other cases, a party seeking to be relieved of this requirement or seeking to file an *ex parte* motion to seal shall contact the chambers of the assigned judge for instructions.

If the motion to seal is granted, the assigned judge will sign the sealing envelope and electronically file an order authorizing the filing of the document under seal. The document will be maintained under seal in the Clerk's office and will not be filed electronically. The assigned judge, in his discretion, may also direct that the supporting materials be filed under seal. If the motion to seal is denied, the assigned judge shall enter an order denying the motion and return the document and supporting materials to the moving party.

- (2) Transcripts of Proceedings. Transcripts of court proceedings will be conventionally filed and served since scanning that set of documents and filing or retrieving them electronically is impractical at this time. Because transcripts will not be scanned or otherwise placed on the System, the Clerk's Office will docket a text-only event stating that the transcript is available in paper form at the Clerk's Office.

- (3) Magistrate Judge Consents. Pursuant to Fed.R.Civ.P. 73(b), parties' filings of consent to jurisdiction by United States Magistrate Judge will continue to be treated as non-public documents until all parties have consented. Therefore, parties must file their consent forms in paper (either mailed or delivered to the Clerk's Office), because electronic filing of a Magistrate Judge consent form will create a public document. If all parties consent to the jurisdiction of the Magistrate Judge, the Clerk will scan all consent forms which will then become public documents.
- (4) Pro Se Filers. Pro Se filers shall file paper originals of all complaints, pleadings, motions, affidavits, briefs and other documents which must be signed or which require either verification or an unsworn declaration under any rule or statute. The Clerk's Office will scan these original documents into an electronic file in the System, but will also maintain a paper file.
- (5) Habeas Corpus Cases. The administrative record in habeas corpus cases will be conventionally filed and served since scanning that set of documents and filing or retrieving them electronically is impractical at this time. Because the administrative record will not be scanned or otherwise placed on the System, the Clerk's Office will docket a text-only event stating that the record is available in paper form at the Clerk's Office.
- (6) Social Security Cases. Absent a showing of good cause, and except as provided in Section o(i)(4) above, all documents, notices and orders in social security reviews will be filed and noticed electronically, except as noted below.
 - (a) An unredacted copy of the complaint, clearly marked as such, shall be provided to the Clerk to be maintained in the case file.
 - (b) The administrative record in Social Security cases will be conventionally filed and served since

scanning that set of documents and filing or retrieving them electronically is impractical at this time. Because the administrative record will not be scanned or otherwise placed on the System, the Clerk's Office will docket a text-only event stating that the transcript is available in paper form at the Clerk's Office.

- (c) All other documents in the case, including briefs, will be filed and served electronically unless the court otherwise orders.
- (d) Access to electronic records in Social Security cases is governed by Federal Rule of Civil Procedure 5.2.

p. System Availability

- i. Although parties can file documents electronically 24 hours a day, attorneys are strongly encouraged to file all documents during normal working hours of the Clerk's Office (8:00 a.m. to 5:00 p.m. Eastern Time).
- ii. The Clerk's Office has established a Help Desk Line to respond to questions regarding the electronic filing system and the registration process and to receive voice mail messages. The Help Desk Line will be staffed business days from 8:30 a.m. to 4:45 p.m. Eastern Standard Time (or Daylight Time when in effect), and will be available at all other times to record voice mail messages. Voice mail messages will be returned within one business day.

q. Technical Failures

- i. A Filing User whose filing is made untimely as the result of a technical failure may seek appropriate relief from the court.

3. PUBLIC ACCESS TO THE SYSTEM

- a. Public Access at the Court. A person may review at the Clerk's Office filings that have not been sealed by the court. Only a Filing

User may file documents. Electronic access to the electronic docket and documents filed in the System is available to the public at no charge at the Clerk's Office during regular business hours. A copy fee for an electronic reproduction is required in accordance with 28 U.S.C. Section 1914.

- b. Internet Access. Remote electronic access to the System for viewing purposes is limited to subscribers to the Public Access to Court Electronic Records ("PACER") system. The Judicial Conference of the United States has ruled that a user fee will be charged for remotely accessing certain detailed case information, such as filed documents and docket sheets in civil cases, but excluding review of calendars and similar general information. Parties' initial access to a document filed electronically is free of charge. Parties are encouraged to download or print the filed document when it is initially accessed via the Notice of Electronic Filing generated by the System.
- c. Conventional Copies and Certified Copies. Conventional copies and certified copies of electronically filed documents may be purchased at the Clerk's Office. The fee for copying and certifying will be in accordance with 28 U.S.C. Section 1914.

(SAMPLE)

United States District Court
Western District of New York

Case No.

Certificate of Service

I hereby certify that on _____, I electronically
filed the foregoing with the Clerk of the District Court using its CM/ECF
system, which would then electronically notify the following CM/ECF
participants on this case:

- 1.
- 2.

And, I hereby certify that I have mailed the foregoing, by the United
States Postal Service, to the following non-CM/ECF participants:

- 1.
- 2.

/s/ name

FIRM ADDRESS

E-MAIL ADDRESS

TELEPHONE NUMBERS